Swiss Institute of Comparative Law: Proceedings of the Colloquium on the New Lugano Convention

The contributions presented at the *19th Journée de droit international privé*, held in March 2007 at the Swiss Institute of Comparative Law (ISDC) and dedicated to the new Lugano Convention, have been published by Schulthess, under the editorship of *Andrea Bonomi*, *Eleanor Cashin Ritaine* and *Gian Paolo Romano*: **La Convention de Lugano. Passé, présent et devenir**.

Here's the table of contents (available as a .pdf file on the ISDC's website):

Avant-propos (*Eleanor Cashin Ritaine*)

Première session (Présidence: *Eleanor Cashin Ritaine*)

- *Monique Jametti Greiner*: L'espace judiciaire européen en matière civile: la nouvelle Convention de Lugano;
- *Alexander R. Markus*: La compétence en matière contractuelle selon le règlement 44/2001 «Bruxelles I» et la Convention de Lugano revisée à la suite de l'arrêt CJCE *Color Drack*;
- *Eva Lein*: La compétence en matière contractuelle: un regard critique sur l'article 5 § 1er de la nouvelle Convention de Lugano;
- *Andrea Bonomi*: Les contrats conclus par les consommateurs dans la Convention de Lugano révisée;
- *Anne-Sophie Papeil*: La Convention de Lugano et la protection du consommateur;
- *Hélène Gaudemet-Tallon*: Quelques réflexions à propos de trois arrêts récents de la Cour de cassation française sur l'art. 5-1 et de l'avis 1/03 de la Cour de justice des Communautés sur les compétences externes de la Communauté.

Deuxième session (Présidence: *Andrea Bonomi*)

- *Jolanta Kren Kostkiewicz*: Rechtshängigkeit und Konnexität;
- *Anton K. Schnyder*: Anerkennung und Vollstreckung ausländischer Entscheidungen;
- *Valentin Rétornaz*: Les limites à l'application autonome de la Convention de Lugano. Aperçu au travers de l'exequatur en Suisse des ordonnances rendues par un juge de la mise en état français;
- *Gian Paolo Romano*: Principe de sécurité juridique, système de Bruxelles I / Lugano et quelques arrêts récents de la CJCE.

Annex: Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Title: **La Convention de Lugano. Passé, présent et devenir. Actes de la 19e Journée de droit international privé du 16 mars 2007 à Lausanne**, edited by *Andrea Bonomi*, *Eleanor Cashin Ritaine* and *Gian Paolo Romano*, Schulthess (Série des publications de l'ISDC, vol. 59), Zürich, 2007, 209 pages.

ISBN: 978-3-7255-5538-3. Price: CHF 75.

(The official text of the new Lugano Convention has been published in the Official Journal of the European Union n. L 339 of 21 December 2007, attached to the Council decision on its signing on behalf of the Community. On 29 February 2008 the Commission presented a Proposal for a Council decision concerning the conclusion of the Convention – COM(2008) 116 fin.)

Conference: ABA International 2008 Fall Meeting

The ABA Section of International Law (ABA International) organizes its 2008 Fall Meeting in Brussels, Belgium, September 23-27 with several private international law related topics on the agenda. Read the letter of the Chair (Aaron Schildhaus) of the ABA Section of International Law (ABA International) here, and see the program agenda here.

Volume 4, Issue 1, Journal of Private International Law

The April 2008 issue of the *Journal of Private International Law* has just been published. The contents are (click on the links to view the abstracts on the Hart Publishing website):

Articles

M. Keyes, "**Statutes, Choice of Law, and the Role of Forum Choice**"

Z. Tang, "**The Interrelationship of European Jurisdiction and Choice of Law in Contract**"

C. Kotuby, "**Private International Law before the United States Supreme Court: Recent Terms in Review**"

M. Pauknerova, "**Private International Law in the Czech Republic: Tradition, New Experience and Prohibition of Discrimination of Grounds of Nationality**"

N. Dariescu & C. Dariescu, "**The Difficulties of Solving Litigation Concerning the Patrimonial Effects of a Marriage Between an Italian Citizen and a Romanian Citizen**"

Review Articles

R. Michaels, "***Public and Private International Law: German Views on Global Issues – S Leible and M Ruffert (eds) Völkerrecht und IPR***"

CONFLICT OF LAWS .NET readers are entitled to a 10% discount when subscribing to the Journal of Private International Law. The subscription rates for the Journal are already very good for both institutions and individuals, and our discount makes it a ridiculously good deal. **Download the order form** (PDF) today to receive your discount.

Conference: International Law Association Conference 2008

The 73rd. Conference of the International Law Association, hosted by its Brazilian Branch, will take place in the city of Rio de Janeiro, at the InterContinental Hotel, August 17-21 2008. The central theme of the Conference will be "Law for the Future," focusing on Natural Resources and Sustainable Development, Rights of the Human Person, Resolution of Private International Disputes, Business and Trade Law, and International Security. Regarding International Private Dispute Resolution, two issues will be addressed:

International Commercial Arbitration

- International Arbitration: Autonomy v. Territorialism
- Public Policy and Mandatory Rules: Influence on the Applicable Law
- The Influence of Cultural Factors on the Choice of the Arbitrator
- Distortions in Contemporary Arbitration: The Problems of Becoming Popular

International Civil Litigation

- Towards World Cooperation Standards: Prospects for the Hague Convention
- The Realities of Regional Judicial Cooperation: Existing Experiences

Registration for the 73rd ILA Biennial Conference is open here.

Article: Jurisdiction for Insolvency-Related Proceedings

Anatol Dutta (Hamburg) has written an article on the German reference for a preliminary ruling in *Seagon v. Deko Marty Belgium NV* (Case C-339/07): **Jurisdiction for insolvency-related proceedings caught between European legislation**, Lloyd's Maritime and Commercial Law Quarterly (LMCLQ) 2008, p. 88-96.

Here is the abstract:

> *The stock of European legislation in the area of private international law is growing steadily. The pointillist technique employed by the European legislator, however, necessarily entails friction between the different legislative acts. One illustrative example, which shall be examined in this article, concerns jurisdiction for insolvency-related proceedings. Such individual proceedings which derive directly from the bankruptcy and are closely connected to collective insolvency proceedings could be governed by different European regulations or even by national law.*

See with regard to this reference also our previous post which can be found here.

Research School on Successful Dispute Settlement in International Law

The University of Heidelberg Law School awards in cooperation with the Max-Planck-Institute for Comparative Public Law and International Law **Doctoral Research Positions** (starting June 2008, duration: up to 3 years) for studies leading to a Doctorate in Law (Dr. jur.) with the following research objective:

How can the success of international dispute resolution be explained? How must successful dispute resolution be organized? The topic includes private and public international law (arbitration, mediation) as well as international criminal law.

For more information on the research program, the coordinators, the stipends as well as requirements and the application procedure see the website of the Institute for Private International Law, University of Heidelberg which can be found (in English) here.

Book: The External Dimension of EC Private International Law in Family and Succession Matters

The papers presented at the international conference held in March 2007 at the University Carlo Cattaneo of Castellanza (see our previous post), and a final report drafted on the basis of the discussion that arose in the colloquium, have been published by CEDAM, under the editorship of *Alberto Malatesta*, *Stefania Bariatti* and *Fausto Pocar*: "**The External Dimension of EC Private International Law in Family and Succession Matters**".

Here's an excerpt from the *Foreword* of the volume:

> *Under the 2005 Framework Programme for Judicial Cooperation in Civil Matters, the European Commission funded an International Research Project presented by the University Carlo Cattaneo of Castellanza on the EC harmonisation of Private International Law and the external relations in family and succession law.*
>
> *A group of scholars coming from various European countries agreed to undertake the task of carrying out an in-depth analysis of the scope of the Community powers in the field of Private International Law in the above*

matters, with special reference to relationships connected with third States.

The focus on family and succession law was deemed crucial in the light of the many initiatives of the European Community in this field pursuant to Articles 61(c) and 65 of the EC Treaty, and of the hot debate they raised about the need itself of such measures and their content. On the other hand, in the course of the Research Project, the European Court of Justice rendered the long-awaited Lugano Opinion (Opinion No 1/03), that provided some general guidelines about the future external dimension of the Community action in the conflicts of laws and its role in the international community.

And this is the table of contents (available as a .pdf file on the publisher's website):

Introductory Speech – *Fausto Pocar*: The "Communitarization" of Private International Law and its Impact on the External Relations of the European Union;

First Part – EC EXTERNAL RELATIONS AND PRIVATE INTERNATIONAL LAW

- *Alberto Malatesta*: The Lugano Opinion and its Consequences in Family and Succession Matters;
- *Andrea Santini*: The Doctrine of Implied External Powers and Private International Law Concerning Family and Succession Matters;
- *David McClean*: Bilateral Agreements with non-Member States after the Lugano Opinion;
- *Stefania Bariatti*: Bilateral Agreements with non-Member States after the Lugano Opinion: Some Procedural Issues.

General Discussion

- *Laura Tomasi*: The Application of EC Law to non-Purely intra-Community Situations.

– – – – – – – – –

Second Part – GENERAL PROBLEMS OF EC PRIVATE INTERNATIONAL LAW WITH REGARD TO RELATIONS WITH THIRD STATES

Section 1: Jurisdiction, Recognition and Enforcement of Judgments and Administrative Cooperation

- *Alegría Borrás*: Lights and Shadows of Communitarisation of Private International Law: Jurisdiction and Enforcement in Family Matters with regard to Relations with Third States;
- *Etienne Pataut*: International Jurisdiction and Third States: A View from the EC in Family Matters;
- *Andrea Bonomi*: The Opportunity and the Modalities of the Introduction of Erga Omnes EC Rules on Jurisdiction;
- *Marta Pertegás*: Recognition and Enforcement of Judgments in Family and Succession Matters;
- *Roberto Baratta*: Short Remarks on EC Competence in Matters of Family Law;
- *William Duncan*: Administrative Cooperation with regard to the International Protection of Children.

General Discussion

- *Carola Ricci*: Habitual Residence as a Ground of Jurisdiction in Matrimonial Disputes: From Brussels II-bis to Rome III;
- *Gaetano Vitellino*: European Private International Law and Parallel Proceedings in Third States in Family Matters.

– – – – – – – – –

Section 2: Applicable Law

- *Kurt Siehr*: Connecting Factors, Party Autonomy and Renvoi;
- *Peter McEleavy*: Applicable Law and Relations with Third States: The Use and Application of Habitual Residence;
- *Th. M. de Boer*: Unwelcome Foreign Law: Public Policy and Other Means to Protect the Fundamental Values and Public Interests of the European Community;
- *Johan Meeusen*: Public Policy in European Private International Law: In Response to the Contribution of Professor Th. M. de Boer on "Unwelcome Foreign Law";
- *Carmen Parra Rodríguez*: Characterisation and Interpretation in European Family Law Matters;

- *Luigi Fumagalli*: Characterization in European Private International Law: Short Notes on the Interpretation Process from Independence to Functionality and Return (to the Tradition).

General Discussion

- *Cristina Mariottini*: The Internal and External Dimensions in the Harmonization of European Conflict Rules on the Administration of Estates.

Final Report*: Alberto Malatesta*.

– – – – – – – – –

Title: **The External Dimension of EC Private International Law in Family and Succession Matters**, edited by *Alberto Malatesta*, *Stefania Bariatti* and *Fausto Pocar*, CEDAM (Studi e pubblicazioni della Rivista di diritto internazionale privato e processuale, n. 71), Padova, 2008, XIV-392 pages.

ISBN: 978-88-13-27276-0. Price: EUR 36.

(Many thanks to Gaetano Vitellino, University "Carlo Cattaneo" of Castellanza, for the tip-off)

BIICL event: Cross-border insolvency of financial groups

As part of the BIICL's 2007-2008 Seminar Series on Private International Law the BIICL organizes on Thursday 17 April 2008 17:30 to 19:30 (at British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London, WC1B 5JP) a seminar titled "Financial Groups: A Fragmented EU Insolvency Regime". The seminar will deal with cross-border insolvency of financial groups; In the event of the insolvency of a financial group, within the EU, banks, insurance companies and other financial institutions are subject to

different insolvency regimes. The purpose of the seminar is to analyse and explain how the different insolvency regimes might operate in the event of a default triggering the insolvency of a group of financial companies. Jurisdiction to open main insolvency proceedings may be allocated to the state in which the centre of main interests of the legal entity is located (under the EU Insolvency Regulation) or where the registered office and/or head office is based (e.g. under the EU Directive on Winding up of Credit Institutions). When cross-border insolvency extends beyond the EU, the UNCITRAL Model Law on Cross-Border Insolvency may come into play. The result is a complicated patchwork of regulation, which does not fit easily with the way in which multinational financial groups conduct cross-border business.

Gabriel Moss QC and John Breslin, an Irish barrister, will tackle a case study involving the collapse of a financial group (see below), following a brief description of the legislative framework by Jane Welch, and an outline of the history of the EU Insolvency Regulation and in particular the development and interpretation of the concept of "centre of main interests" by Professor Ian Fletcher. The seminar is chaired by Mr. Justice David Richards. The case study that will be analysed and discussed involves a group containing a UK bank and its Irish fund-raising subsidiary, a management company incorporated in Gibraltar and a UK insurance company. The sub-prime crisis leads to the insolvency of the Irish subsidiary and the other group companies. For more information about the seminar, its Chair, speakers and sponsor, have a look at the website.

Rome I: Statements by the Council and the Commission on Insurance Contracts and by the French

Delegation on Consumer Contracts

Following our post on the release of the final text of the Rome I Regulation, an internal document by the *General Secretariat of the Council* to the *Permanent Representatives Committee* (COREPER) confirms that the new Regulation will be soon adopted by the Council (doc. n. 7689/08 of 7 April 2008):

> *5. The Permanent Representatives Committee is therefore asked to confirm agreement and* ***advise the Council to:***
>
> - ***adopt the Regulation, as set out in PE-CONS 3691/07 JUSTCIV 334 CODEC 1401, as an "A" item at a forthcoming meeting****;*
> - *decide to enter in the minutes of that meeting the statements set out in the addendum to this note.*
>
> *After being signed by the President of the European Parliament, the President of the Council and the Secretaries-General of the two institutions, the legislative act will be published in the Official Journal of the European Union.*

Quite surprisingly, as regards the participation of the United Kingdom in the adoption of the Regulation, a footnote of the document states:

> *In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation.*

This is probably a mistake, since the United Kingdom has not so far officially opted in (see Recital n. 45 of the Regulation), and a consultation paper on the matter was launched last week by the Ministry of Justice (see our post here).

[**UPDATE on the position of the United Kingdom**: a revised version of the document has been released – doc. n. 7689/1/08 REV 1 of 9 April 2008 -, where it is clearly stated that, at present, "[i]n accordance with Articles 1 and 2 of the Protocol […] and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by

it or subject to its application“]

Two statements are set out in the Addendum (doc. n. 7689/08 ADD 1 of 7 April 2008): one by the Council and the Commission, relating to the new conflict rule **on insurance contracts** (Art. 7 of the new Regulation), and one by the French delegation, **on the consistency between the rule on applicable law in consumer contracts** (Art. 6) **and future revisions of Brussels I Regulation** as regards the provisions relating to jurisdiction in the same matter (Section 4, Articles 15-17 of Brussels I Reg.). Here’s the text:

> ***DECLARATION BY THE COUNCIL AND THE COMMISSION RELATING TO THE LAW APPLICABLE TO INSURANCE CONTRACTS***
>
> *The Council and the Commission note that the rules contained in Article 7 essentially reflect the legal situation as regards applicable law as presently included in the insurance Directives. Any future substantive revision of the present regime should take place in the context of the review clause of this Regulation.*
>
> ***DECLARATION BY THE FRENCH DELEGATION RELATING TO ARTICLE 6 OF ROME I ON THE LAW APPLICABLE TO CONSUMERS***
>
> *In view of the importance of conflict-of-law rules in international private law, and in order to achieve the objective, laid down in Article 153 of the EC Treaty, of ensuring a high level of consumer protection within the Community, France wishes to state that, in the revision of Regulation 44/2001 EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the provisions relating to jurisdiction (section 4 of Brussels I) must be consistent with Article 6 of the Regulation applicable to contractual obligations (Rome I), concerning the law applicable to consumer contracts.*

Summer Seminar in Urbino

Readers of the blog may be interested in this summer seminar where many courses on conflicts are taught.

The seminar has been hosted by the university of Urbino, Italy, for 50 years. Courses of Private International Law, Comparative Law and European Law are taught either in French or in Italian (with a translation in the other language). Professors are not only Italian (L. Mari, T. Ballarino) and French (H. Muir Watt, B. Audit) but also German (E. Jayme) or Portuguese (M. Rui Moura Ramos, D. Pina).

The program of the 2008 Seminar can be found here.

I personally participated to the seminar years ago and had a great time, so I can only recommend it!